



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 5, 1996

Mr. Mark C. Rains
Cullen, Carsner, Seerden & Cullen
P.O. Box 2938
Victoria, Texas 77902-2938

OR96-1588

Dear Mr. Rains:

You seek reconsideration of Open Records Letter No. 96-1001 (1996). We have assigned your request for reconsideration ID# 100893.

You first raise concerns over the costs associated with redacting information that this office concluded the Victoria Independent School District (the "school district") could withhold from required public disclosure. The proper governmental body to answer questions about costs associated with chapter 552 of the Government Code is the General Services Commission. We suggest that you contact Ms. Hadassah Schloss at (512) 475-2497 for answers to your queries about the costs of redacting information.¹

You next ask for clarification regarding the portion of the ruling in which we concluded that the school district had not met its burden under section 552.103 of the Government Code as to certain entries on pages 12 and 13 of Exhibit 9.² You argue that a governmental body can be aware of probable or contemplated future litigation in areas to which the Texas Tort Claims Act does not apply or in cases in which the school district

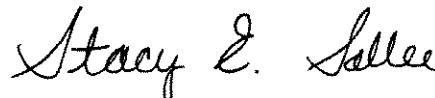
¹We note that questions concerning the Family Educational Rights and Privacy Act of 1974 can be directed to Family Policy Compliance Office, whose address and telephone number are: Family Policy Compliance Office, United States Department of Education, 600 Independence Avenue S.W., Washington, D.C. 20202-4605, (202) 260-3887.

²We note that to the extent that you are seeking an opinion from this office, we are precluded from doing so. Sections 402.042 and 402.043 of the Government Code, which authorize us to issue opinions, set out the public officials who may request opinions. We are prohibited by section 402.045 of the Code from giving legal advice or a written opinion to any other person.

has not yet received official notice under the Texas Tort Claims Act. This office has addressed those instances in many published decisions and has concluded that where there is concrete evidence showing that the claim that litigation may ensue is more than mere conjecture, a governmental body has established that litigation is reasonably anticipated. *See, e.g.*, Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). This office has concluded that litigation is reasonably anticipated when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, and when a requestor hires an attorney who threatens to sue a governmental entity. Open Records Decision Nos. 555 (1990), 551 (1990). However, in Open Records Decision No. 638 (1996), this office concluded that if a governmental body wishes to establish reasonable anticipation of litigation based solely on the receipt of a notice of claim, that governmental body must represent to this office that the notice is in compliance with the notice requirements of the Texas Tort Claims Act or applicable municipal ordinance.

Here, the school district relied solely on the receipt of a notice of claim and did not make the requisite representation to this office that the notice complied with the Texas Tort Claims Act or applicable municipal ordinance. We note that the school district was not precluded from establishing reasonable anticipation of litigation based on other concrete steps toward litigation. If the school district was aware of additional facts that would have established reasonable anticipation of litigation under the previous decisions of this office, the school district had the burden of presenting those facts to this office in its request for a ruling. *See* Gov't Code § 552.301(b)(1); Open Records Decision No. 638 (1996). As the school district did not meet its burden under section 552.103, we decline to reconsider our ruling in Open Records Letter No. 96-1001 (1996). If you have any questions regarding this matter, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 100893

cc: Mr. John Griffin, Jr.
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